

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 05-255
Competition in the Market for the)	
Delivery of Video Programming)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the above-noted proceeding.¹ OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Video services are an increasingly important aspect of OPASTCO members' service offerings. Half of OPASTCO's members operate small cable television companies in their rural service areas. Often these communities are not lucrative enough to attract larger providers. Other OPASTCO members offer video services via digital

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Notice of Inquiry, FCC 05-155 (rel. Aug. 12, 2005) (NOI).

subscriber line (DSL) technology in their service area, and/or in neighboring territories where they have overbuilt facilities in order to provide superior service to consumers. Some OPASTCO members provide video satellite services, while an increasing number have deployed fiber to the home (FTTH) in an effort to bring an array of high-speed and advanced voice, video and data services to consumers. However, access to necessary video content at reasonable rates and under reasonable terms continues to pose a challenge to rural local exchange carriers (LECs) wishing to provide video services to residents in rural areas. This, in turn, impedes the ability of these carriers to further extend broadband services to more consumers.

II. THE VIDEO SERVICES OFFERED BY SMALL LECS CONTINUE TO EXPAND BEYOND TRADITIONAL COAXIAL CABLE

The NOI seeks “information generally regarding incumbent LECs that provide video programming services.”² It also seeks information on small, rural LECs that serve as multichannel video programming distributors (MVPDs).³ In order to provide the Commission with recent data regarding the status of rural LEC video efforts, OPASTCO conducted a joint survey with Viodi LLC, a firm that specializes in video content acquisition and marketing for rural telephone companies.⁴ The results demonstrate that despite significant obstacles,⁵ a growing number of rural LECs, either directly or through affiliates and/or subsidiaries, are becoming MVPDs using newer technologies.

Approximately 50 percent of respondents indicated that they provide video via

² NOI, para. 54.

³ *Ibid.*, para. 57.

⁴ On Sept. 15, 2005, a survey was sent to 698 rural incumbent LECs, including both members and non-members of OPASTCO. Seventy-seven companies replied, for a response rate of over 11 percent.

⁵ See Section III, below.

traditional coaxial cable.⁶ Sixty-five percent of respondents reported that they provide video using DSL or FTTH technology.⁷ While 30 percent of respondents do not provide video currently, only 12 percent indicated that they do not expect to provide video within the next 18 months.

The survey also revealed the following:

HOMES PASSED – Respondents’ video services pass an average of 5,335 homes. On a company-by-company basis, the range is wide, from as few as 80 homes to as many as 45,500, with a median of 2,500.

SUBSCRIBERS – On average, respondents serve 2,929 video customers. Again, the range is significant, from as few as 75 customers to as many as 32,000, with a median of 1,020.

FRANCHISE or OPEN VIDEO SYSTEM (OVS) – Seventy-four percent of respondents reported providing video under a franchise from local authorities. Less than eight percent indicated they did so under OVS provisions.⁸

DIFFICULTY OBTAINING FRANCHISES – Significantly, respondents that serve as MVPDs in multiple jurisdictions, or in areas where they face competition from large cable companies, reported major roadblocks to obtaining franchises from local authorities. Resistance from incumbents and high fees from localities were prevalent in these cases. While these respondents represented 11 percent of the total, their experience

⁶ The 50 percent figure is consistent with earlier estimates and findings; *e.g.*, OPASTCO *ex parte*, GN Docket No. 04-54, *et. al.*, “The Video-Broadband Link” (fil. Nov. 10, 2004), p. 3 (Video-Broadband *ex parte*).

⁷ The survey asked respondents to identify the specific technology they use to provide video services. The results were as follows: Coaxial cable/Hybrid Fiber Coax – 50.65%; ADSL (Internet Protocol (IP)) – 19.48%; FTTH (Radio Frequency (RF)) – 14.29%; VDSL (Asynchronous Transfer Mode (ATM)) – 12.99%; ADSL (ATM) – 9.09%; FTTH (IP) – 7.79%; VDSL (IP) – 1.3%. Only 29.87% of respondents indicated that they do not currently provide video.

stands in stark contrast to those respondents that act as the sole MVPD in their local community. Almost none of these respondents reported any trouble obtaining a franchise. In fact, some of these respondents, who are known for their dedication to their customers, reported that local authorities actively encouraged them to enter the video market.

III. LACK OF A WORKABLE BUSINESS MODEL AND ACCESS TO CONTENT ARE THE LARGEST AND INTERTWINED IMPEDIMENTS TO RURAL LECS' ENTRY INTO THE VIDEO MARKET

The NOI requested information regarding any unique barriers to entry into smaller and rural video markets.⁹ A plurality of survey respondents, 41.5 percent, indicated that the lack of a workable business model was the largest impediment to market entry. The lack of access to affordable content under reasonable terms was cited as the largest impediment by the next largest percentage of respondents, at 29.9 percent. Notably, these two impediments are inexorably intertwined. Respondents often noted that the business model was so difficult largely because of the cost of access to programming. These challenges pose a severe threat to the ability of rural LECs to expand MVPD services to more consumers.

As OPASTCO has stated in previous filings in this proceeding, the lack of access to affordable content under reasonable terms and conditions hinders the ability of rural LECs to enter the MVPD market.¹⁰ The initial comments of other parties in this

⁸ The remaining balance of survey respondents did not reply to this question.

⁹ NOI, para. 57.

¹⁰ Video-Broadband *ex parte*, pp. 7-8; OPASTCO Reply Comments, MB Docket No. 04-227 (fil. Aug. 25, 2004), pp. 4-5. It is notable that a number of rural LECs are striving to better serve their local consumers through the production and facilitation of original video content. Viodi, LLC has produced successful workshops specifically for rural LECs to learn various ways to create content that is relevant to their communities. The content produced includes biographies of local luminaries, documentaries of local historical interest, political debates, children's programming, home and auto repair, school sporting events,

proceeding thoroughly illustrate the numerous issues rural carriers face in this regard.¹¹ These include non-disclosure agreements, retransmission consent, tying arrangements, predatory pricing, restrictions on the use of IP video, and the possible reduction of content made available to providers that share head-ends.

The National Telecommunications Cooperative Association (NTCA) accurately notes that virtually all of the contracts negotiated between content providers and large cable companies include non-disclosure agreements.¹² Therefore, it is virtually impossible for rural providers to know what the true market rates for programming actually are. If rural carriers, who already face higher per-customer costs due to sparsely populated service areas, must pay more for programming than their larger counterparts, they will experience increased difficulty in crafting a viable business model for providing video services.

As the American Cable Association (ACA) explains, the retransmission consent process requires small video service providers to pay ever-higher rates for content. These fees will raise consumer rates by \$2.50 - \$5.00 per month in smaller markets, according to ACA.¹³ OPASTCO concurs with ACA's position that in order to answer the questions raised by the NOI, the Commission should examine the information previously provided in a variety of proceedings regarding wholesale programming practices and retransmission consent.¹⁴

NTCA also describes "rampant" tying arrangements, which force small MVPD

concerts and information on local school activities.

¹¹ See, e.g., Broadband Service Providers Association (BSPA), pp. 12-15; CenturyTel, pp. 10-12; USTelecom, p. 16.

¹² NTCA, p. 4; see also ACA, pp. 5-15

¹³ ACA, pp. 7-9. See also BSPA, p. 24.

providers to purchase additional content in order to gain access to “flagship” channels.¹⁵

Practices that require rural carriers to carry channels that are not demanded by most of their customers, or that compel them to place less-popular channels in certain tiers, prevents rural carriers from crafting tiers that match the demands of their individual markets. Rural, community-based providers should be able to craft tiers that reflect the demand of their local marketplace. Current tying requirements prevent rural MVPDs from doing so.

Another impediment to a workable business model is predatory pricing.¹⁶ This is known to occur in areas where a small MVPD company competes against a large cable operator. NTCA provides an example of a large company offering consumers a \$300 check and service at \$5.00 per month as an incentive to win back those who had switched to a new entrant.¹⁷ Similarly, a respondent to the OPASTCO/Viodi survey reported a comparable incident, where customers were offered \$100 and six months of free service once a small MVPD entered the market. Clearly such predatory pricing makes it exceedingly difficult for a small provider to stay in business and dissuades rural LECs from offering or expanding MVPD services to more consumers.

NTCA also relates concerns about resistance to IP video from some content providers.¹⁸ While methods to guard against piracy and ensure security of intellectual property are clearly necessary, simply prohibiting IP video, or imposing embellished security requirements primarily to dissuade rural LECs from utilizing this technology,

¹⁴ ACA., p. 9.

¹⁵ NTCA, p. 5.

¹⁶ BPSA, pp. 15-18; Video-Broadband *ex parte*, p. 8.

¹⁷ NTCA, p. 7.

¹⁸ *Id.*, p. 10. *See also* Video-Broadband *ex parte*, p. 8.

represents yet another serious barrier to the advancement of competition in the video market.

In addition, OPASTCO concurs with NTCA's remarks about shared head-ends.¹⁹ Sharing expensive head-end facilities is an economical way for rural LECs to provide video services. As NTCA notes, the prospects of content providers reducing or eliminating the availability of content to those who share head-ends represents yet another barrier to small LEC entry into the MVPD market.

Finally, as OPASTCO has noted before, rural LEC expansion or entry into the video market does more than simply provide additional video choices for consumers. By bundling broadband services with video, rural LECs have seen a demonstrable increase in "take rates," which, in turn, makes broadband deployment more economically viable in the service areas of these companies.²⁰ It follows then, that factors which impede rural LECs' deployment of video services also impede the further deployment of advanced services in rural areas, a Congressionally mandated goal of the Commission.

V. CONCLUSION

Rural telephone companies are actively offering video services to consumers. An increasing number are, or will soon be, using new broadband technologies to provide video. The entry of rural telephone companies into the video market leads to more consumer choice and enhances the deployment of broadband, furthering a key policy goal of the Commission.

However, these efforts are restricted by a daunting business model challenge that is largely the result of the high cost of video content. Practices such as forced carriage of

¹⁹ NTCA., pp. 10-11.

unwanted programming, forced inclusion of programming in certain tiers, mandatory nondisclosure provisions, higher retransmission consent fees, and predatory pricing by large video providers all serve as barriers to rural LECs' ability to deliver video services to their communities. These barriers, in turn, impede efforts to deploy more broadband services to the rural communities served by these carriers.

Respectfully submitted,

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²⁰ Video-Broadband *ex parte*, pp. 5-6. *See also* USTelecom, pp. 3-6.

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 11th day of October, 2005, to those listed on the attached sheet.

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